IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.Revision No.88 of 2007, Cr.MP(M) Nos.464 & Cr.M.P.No.303 of 2007

Judgment Reserved on:25.09.2007.

Date of decision:*September 27, 2007*.

Madan Gopal **…..Applicant - Petitioner.**

Vs.

Ashok Kalra & Anr. **…. Respondents.**

Coram

The Hon'ble Mr. Justice Kuldip Singh, Judge.

Whether approved for reporting?[1] No

For applicant / Petitioner : **Mr.Dinesh Bhanot, Advocate.**

For the Respondents : **Mr.Deepak Bhasin, Advocate for respondent No.1.**

M.L.Chauhan, Addl. Advocate General, for respondent No.2.

Kuldip Singh, Judge.

Cr.M.P.(M) No.464 of 2007:

This is an application under Section 5 of the Limitation Act for condonation of 197 days delay in filing the revision against the judgment dated 11.9.2006 passed by learned Sessions Judge, Kangra at Dharamshala in Criminal case No.5-D/X-2006.

2. The applicant / petitioner was convicted by learned Chief Judicial Magistrate, Kangra at Dharamshala on 16/17.1.2006 in Criminal case No.65-III/03 under Section 138 of the Negotiable Instruments Act, 1881 (hereafter referred to as 'the Act'). The applicant was sentenced till the rising of the Court and to pay a fine of

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Whether the reporters of the local papers may be allowed to see the Judgment? Yes

Rs.60,000/- under Section 138 of the Act, in default of payment of fine, he was directed to undergo simple imprisonment for six months. Out of total fine of Rs.60,000/- if recovered, an amount of Rs.50,000/- was ordered to be paid to the complainant as compensation. The applicant filed an appeal against his conviction and sentence, which was dismissed by learned Sessions Judge on 11.9.2006.

3. The applicant has filed revision in this Court along with application under Section 5 of the Limitation Act for condonation of delay in filing the revision. It has been submitted in the application that revision is barred by 197 days. The cause shown in the application was illness of the wife of the applicant and her treatment in hospitals in Himachal Pradesh and Punjab. The application is opposed by respondent No.1 by filing reply in which the respondent has submitted that applicant has not shown sufficient cause for condonation of delay. The applicant filed supplementary affidavit dated 30.8.2007 and in the supplementary affidavit he has reiterated that his wife remained ill and was treated at various hospitals in Himachal Pradesh as well as Punjab. The applicant had to incur huge amount on her treatment. In the supplementary affidavit, the applicant has not stated the period during which his wife remained under treatment and the nature of her treatment. He has not stated in the supplementary affidavit that the nature of illness of his wife was such that required personal attendance of applicant to look after her nor illness of his wife was of such nature that he could not spare even 2/3 days for filing revision in time or within reasonable time after the receipt of copy of impugned judgment.

4. The certified copy of judgment was delivered to applicant on 30.9.2006. The applicant has filed some documents showing tests, cash memos, O.P.D. Card etc. of Mrs. Neelam. These documents are spread over from 19.8.2006 to 27.4.2007, most of these documents are with respect to purchase of medicines, tests, prescription slips etc. of Mrs.Neelam but in none of these documents it is recorded that wife of the applicant is bed ridden and she requires full time attendant to look after her. It is not the case of the applicant that during the illness of his wife the presence of applicant was required 24 hours. It is also not his case that no help was available to him during the illness of his wife and he was not in a position to move out even for 2/3 days for filing the revision. The applicant is resident of Hamirpur. The documents showing tests of the wife of applicant, purchase of medicines, O.P.D. Card etc, noticed above, are from Bhatinda, Hamirpur. This shows that wife of the applicant was not confined to bed and she was travelling from Hamirpur to Bhatinda and back. The last document which applicant has filed with the supplementary affidavit dated 30.8.2007 is dated 27.4.2007. The revision was filed by the applicant on 5.7.2007. The applicant has not explained the delay in not filing the revision from 27.4.2007 to 5.7.2007. The applicant has filed another supplementary affidavit dated 14.9.2007 and along with this affidavit he has filed certificate dated 13.9.2007 issued by Dr.Vikas Mandyal, Sri Krishna Hospital, Hamirpur. In this certificate, the Doctor has stated that Mrs.Neelam remained under treatment from 27.4.2007 till June 2007. In this certificate the Doctor has not stated that Mrs.Neelam was bed ridden

and she required attendant. The applicant has not explained the delay in filing the revision in accordance with law.

5. It has been submitted by learned counsel for the applicant that condonation of delay application is to be construed liberally, but still the applicant is required to explain delay. In the present case, there is no explanation of delay after 27.4.2007 till the filing of the revision, even before that the illness of the wife of the applicant is of not such nature which prevented the applicant from filing the revision within time or within reasonable time after the expiry of period of limitation. The condonation of delay application cannot be allowed mechanically or on just asking. There must be some material on record for condonation of delay and if such material is on record then the application for condonation of delay is to be construed liberally. In the present case, the applicant has failed to make out any case for condonation of delay in filing the revision. Resultantly, the application for condonation of delay in filing the revision is dismissed.

Cr.M.P.No.303 of 2007:

6. Infructuous.

Cr.Revision No.88 of 2007:

7. In view of the dismissal of Cr.M.P.(M) No.464 of 2007, the revision petition has become infructuous.

September 27, 2007. ***(Kuldip Singh)***
(soni) ***Judge.***